

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MONSANTO COMPANY and
MONSANTO TECHNOLOGY LLC,

Plaintiffs,

v.

E.I. DU PONT DE NEMOURS AND CO. and
PIONEER HI-BRED INTERNATIONAL, INC.,

Defendants.

Case No. 09-cv-0686 (ERW)

DUPONT'S MOTION TO STRIKE

Defendants/Counterclaim Plaintiffs E. I. du Pont de Nemours and Co. and Pioneer Hi-Bred International, Inc. (collectively, "DuPont and Pioneer") hereby request that the Court strike and disregard Section I of a letter dated September 12, 2011 from Monsanto's counsel to the Court, which was attached as Exhibit 1 to a "Notice" filed by Monsanto on September 12, 2011 (*See* Dkt. 875-1).

Section I of Monsanto's September 12, 2011 letter constitutes improper and unauthorized sur-reply arguments in connection with Monsanto's Ninth Motion to Compel. Such arguments violate Local Rule 4.01(c) (stating that other than memoranda in support, in opposition, and in reply, "[a]dditional memoranda may be filed by either party *only* with leave of Court"). They are also contrary to the Court's Orders dated July 22, 2011 (Dkt. 812) and August 30, 2011 (Dkt. 853), neither of which authorized Monsanto to submit additional substantive arguments in connection with the Court's ongoing *in camera* review of privileged documents. Such arguments are prejudicial to DuPont and Pioneer because, among other things, they mischaracterize DuPont's and Pioneer's documents and the record in this case, and they were

submitted in a letter to the Court in a manner that evades the adversarial process because DuPont and Pioneer would not have an opportunity to respond to those arguments.¹

A memorandum in support of the instant motion is filed concurrently herewith.

WHEREFORE the Court should enter an Order striking and disregarding Section I of the September 12, 2011 letter from Monsanto's counsel to the Court, which was attached as Exhibit 1 to the Notice filed by Monsanto on September 12, 2011 (Dkt. 8750), or if the Court is inclined to consider the arguments contained in this letter, the Court should grant DuPont and Pioneer leave to submit a response to Monsanto's arguments for the Court to consider as it reviews the 100 challenged entries discussed in Monsanto's letter.

¹ DuPont and Pioneer do not take issue with Section II of Monsanto's September 12, 2011 letter to the Court. That section of Monsanto's letter includes non-argumentative information about the transmittal of certain documents and information to the Court pursuant to the Court's August 30, 2011 Order.

Dated: September 15, 2011

Respectfully submitted,

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Company and Pioneer Hi-Bred International, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on September 15, 2011, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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